

3738
RJM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RESPONSE TO OFFICE ACTION

Applicant: Roger P. Jackson

Serial No.: 09/552,743

Date: July 23, 2004

Filed: April 18, 2000

Group Art Unit: 3738

Exam: B. Pellegrino

For: ANTERIOR EXPANDABLE SPINAL FUSION CAGE SYSTEM

Kansas City, Missouri

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Two identical actions have been received (in separate envelopes) with cover sheets for the above noted application. The body of the actions are for a completely different application in which the inventor's name is apparently Allan. It is believed that the wrong serial number was applied to the Allan reexamination action.

As the action has nothing to do with the above captioned application, it is urged that no response is due and no further response will be filed.

In checking with Examiner Pellegrino of the above captioned application, it was found that no new action issued on July 14,

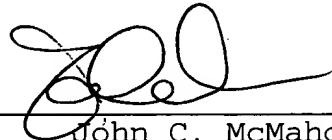
Roger P. Jackson

Serial No. 09/552,743

so it is apparently not a case of the actions being mixed up.

Examiner Truong was contacted, but she has not responded further.

Respectfully Submitted,



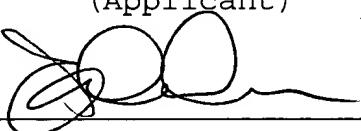
John C. McMahon
Reg. No. 29,415
Attorney

JCM:lm
PO Box 30069
Kansas City, Missouri
64112
Phone: (816) 531-3470

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner For Patents,
P.O. Box 1450,
Alexandria, VA 22313-1450 on
July 23, 2004.

Roger P. Jackson
(Applicant)

By



July 23, 2004

(Date of Signature)



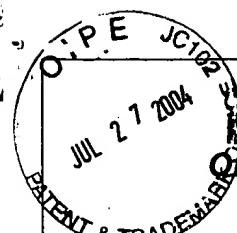
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/552,743	04/18/2000	Roger P. Jackson	99.198	2761
7590	07/14/2004			
John C McMahon P O Box 30069 Kansas City, MO 64112				EXAMINER TRUONG, LECHI
				ART UNIT 2126
				PAPER NUMBER DATE MAILED: 07/14/2004



Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary



Office Action Summary	Application No.	Applicant(s)
	09/552,743	ALLAN
Examiner	Art Unit	
LeChi Truong	2126	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 April 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

1. Claims 1-24 are presented for examination. Applicant elected group I (claims 1-24) and claims 25-39 had been withdraw from consideration.
2. This application contains claims 25-39 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. Applicant is required to cancel all non-elected claims (25-39).
3. The cross reference related to the application cited in the specification must be updated (i.e. update the relevant status, with PTO serial numbers or patent numbers where appropriate, on page 1, ln 1-12). The entire specification should be so revised.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 8-18, 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killian US (patent 6,438,592 B1) in view of Admitted Prior Art (APA).

5. **As to claim 1**, Killian teaches the invention substantially as claimed including: an content (performance monitoring instruction, col 3, ln 35-37/ data object, col 8, ln 39-40/ col 3, ln 28-32), a first digital information appliance (client computer, col 3, ln 28-32/ client col 8, ln 39-40), encapsulated transaction object (form of instruction such as Java, col 3, ln 44-46), monitoring usage of content (col 8, ln 45-49/ col 11, ln 35-40), a utilization event of the monitored usage (type of event of which function, col 11, ln 35-40), identifying(col 9, ln 7-10/ col 11, ln 35-40), an occurrence of the utilization event in the transaction object(a performance message's started object and end object fields 142 and 144 ... which started and ended the message's timeDifference occurred, col 9, ln 36-40/ Fig. 1/ col 8, ln 40-46/col 10, ln 5-8), the transaction object is capable of transmitting data related to the stored occurrence of utilization event over a network(col 8, ln 40-48).

6. Killian does not explicit teach the term digital information. However, APA teaches Digital information (digital information, page 3, ln 3-6).

7. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Killian and APA because APA's digital information would develop a standard system architecture and operating environment to facilitate their use and interconnection with each other and other network devices.

8. **As to claim 2**, Killian teaches requesting content (a URL request, col 8, ln 39-45), a network (the internet, col 7, ln 53-68/ Fig. 1).

9. **As to claim 3**, Killan teaches the request object (performance monitoring instruction, col 3, ln 35-37/ data object, col 8, ln 39-40/ col 3, ln 28-32/ the starttimer and endtimer functions, col 17, ln 2-8).

10. **As to claim 4**, Killan teaches request interface object (the starttimer function 168, the endtimer function 170, col 11, ln 1-6/cl 13, ln 10-7), a request implement dynamic base object (the bodies of these functions are represented by ellipses. In figs. 4, 5 and 6, col 11, ln 2-7/col 13, ln 1-7).

11. **As to claim 5**, Killan teaches the request to a request implementation dynamic base object (col 13, ln 30-39), a plurality of content objects a desired content object based upon a user-defined criterion (col 17, ln 30-42).

12. **As to claim 6**, Killan teaches the user defined criterion includes at least one of cost, pricing structure (col 17, ln 24-29).

13. **As to claim 8**, Killan teaches a first occurrence of the transaction object including a transaction interface dynamic base object(starttimer function 168, col 11, ln 1-5), a second occurrence of the transaction object including a transaction implement dynamic base object, the bodies of function endtimer function 170, col 11, ln 1-6).

14. **As to claim 9**, APA teaches a plurality of payment algorithm (on line purchases of goods and services ... a buyer and a seller to transact business, page 3, ln 1-3).

15. **As to claim 10**, APA teaches the second occurrence of the transaction object residing on a second digital information application (page 4, ln 2-7).

16. **As to claim 11**, Killan teaches the central transaction authenticator (col 17, ln 23-32).

17. **As to claim 12**, Killan teaches the content is provided by at least of media (col 1,1 n 40-45).

18. **As to claim 13**, it is an apparatus claim of claim 1; therefore, it is rejected for the same reason as claim 1 above. Additional, in claim 13, Killan teaches processor on a digital information appliance (a client computer, col 7, ln 63), a network connection device (internet, fig. 1).

19. **As to claim 14-18, 20-24**, they are apparatus claims of claim 2-6, 8-12; therefore, they are rejected for the same reasons as claims 2-6, 8- 12 above.

20. **Claims 7, 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Killian US (patent 6,438,592 B1) in view of Admitted Prior Art (APA) and further in view of Lozowick et al (US. Patent 5,228,083).

21. **As to claim 7**, Killan and APA do not teach saving the occurrence of the utilization event until the network connection is available. However, Lozowick teaches saving the occurrence of the utilization event until the network connection is available (storing outbound packets in the outbound buffer if the communication network is unavailable, col 2, ln 42-45).

22. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Killan, APA and Lozowick because Lozowick's storing outbound packets in the outbound buffer if the communication network is unavailable would affect performance adversely, by the injection of processing delays in one direction or the other.

23. As to claim 19, it is an apparatus claim of claim 19; therefore, it is rejected for the same reasons as claims 7 above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is (703) 305 5312. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 703-305-9678. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

LeChi Truong

July 12, 2004

Sue Lee


THOMAS LEE
PATENT EXAMINER
ELECTRONIC BUSINESS CENTER 2100

Application/Control Number: 09/552,743
Art Unit: 2126

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